

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

WALTER CURTIS MOLES,)
)
)
Plaintiff,)
)
-vs-) Case No. CIV-08-594-F
)
)
HARLEY G. LAPPIN, Director,)
Bureau of Prisons, et al.,)
)
Defendants.)

ORDER

On February 26, 2009, United States Magistrate Judge Valerie K. Couch issued a Report and Recommendation, wherein she recommended the following rulings:

1. Defendants' Motion to Dismiss be denied;
2. Plaintiff's Motion for Preliminary Injunction, Motion for Hearing, and Motion for Order be denied as moot;
3. Plaintiff's Motion for Leave to Amend his Complaint be granted with respect to Plaintiff's request to add as an additional defendant Mathew Mendez, Case Manager, FCI El Reno, and be denied with respect to Plaintiff's request to add as additional defendants Lt. Phelps, Six Unnamed Guards at USP Terre Haute, H.J. Marberry, Warden at USP Terre Haute, Trina Meyers, Administrative Remedy Coordinator at USP Terre Haute, and Michael Nulley, Regional Counsel;
4. Plaintiff's Motion to Supplement his Motion for Leave to Amend be granted; and

5. Plaintiff's Motion Seeking Additional Discovery/Continuance Pursuant to Fed. R. Civ. P. 56(f) be denied without prejudice to Plaintiff's ability to pursue discovery as may be appropriate pursuant to the Federal Rules of Civil Procedure.

In the Report and Recommendation, Magistrate Judge Couch advised the parties of their right to file an objection by March 18, 2009 and further advised that failure to make timely objection to the Report and Recommendation waives the right to appellate review of the factual and legal issues therein addressed.

On March 18, 2009, defendants filed an objection to the Report and Recommendation. To date, plaintiff has not filed any objection. Instead, on March 25, 2009, plaintiff filed an Amended Complaint and various motions.

In accordance with 28 U.S.C. § 636(b)(1), the court has conducted a *de novo* review of the matter.¹ Having done so, the court concurs with the analysis of Magistrate Judge Couch in regard to defendants' dismissal motion. The court finds no purpose in repeating that analysis here. The court therefore accepts, adopts and affirms the Report and Recommendation in regard to defendants' Motion to Dismiss.

As plaintiff has not objected to the Report and Recommendation within the time prescribed, the court also accepts, adopts and affirms the Report and Recommendation in regard to plaintiff's various motions.

IT IS THEREFORE ORDERED that the Report and Recommendation of United States Magistrate Judge Valerie K. Couch issued on February 26, 2009 (doc. no. 93) is **ACCEPTED, ADOPTED and AFFIRMED**;

¹ Although the court has conducted a *de novo* review, the court has not considered any legal arguments presented by defendants in their objection which were not presented to Magistrate Judge Couch in their briefing papers. Arguments not raised before Magistrate Judge Couch are deemed waived. *See, Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996) ("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived.")

IT IS ALSO ORDERED that Defendants' Motion to Dismiss filed on November 10, 2008 (doc. no. 66) is **DENIED**;

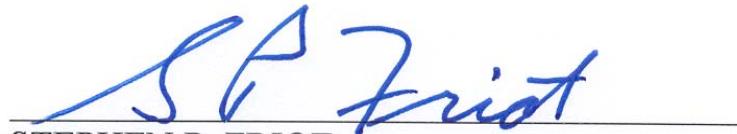
IT IS ADDITIONALLY ORDERED that Plaintiff's Motion for Preliminary Injunction filed on July 16, 2008 (doc. no. 27), Motion for Hearing filed on July 28, 2008 (doc. no. 29), and Motion for Order filed on October 31, 2008 (doc. no. 63), are **DENIED** as **MOOT**;

IT IS FURTHER ORDERED that Plaintiff's Motion for Leave to Amend his Complaint filed on December 1, 2008 (doc. no. 74) is **GRANTED** with respect to Plaintiff's request to add as an additional defendant Mathew Mendez, Case Manager, FCI El Reno, and is **DENIED** with respect to Plaintiff's request to add as additional defendants Lt. Phelps, Six Unnamed Guards at USP Terre Haute, H.J. Marberry, Warden at USP Terre Haute, Trina Meyers, Administrative Remedy Coordinator at USP Terre Haute, and Michael Nulley, Regional Counsel;

IT IS FURTHER ORDERED that Plaintiff's Motion to Supplement his Motion for Leave to Amend filed on December 19, 2008 (doc. no. 82) is **GRANTED**; and

IT IS FINALLY ORDERED that Plaintiff's Motion Seeking Additional Discovery/Continuance Pursuant to Fed. R. Civ. P. 56(f) filed on December 1, 2008 (doc. no. 71) is **DENIED WITHOUT PREJUDICE** to Plaintiff's ability to pursue discovery as may be appropriate pursuant to the Federal Rules of Civil Procedure.

DATED March 27, 2009.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE